

DISAPPROVING CERTAIN REGULATIONS PROPOSED BY THE GENERAL SERVICES ADMINISTRATION IMPLEMENTING SECTION 104 OF THE PRESIDENTIAL RECORDINGS AND MATERIALS PRESERVATION ACT

SEPTEMBER 9, 1976.—Referred to the House Calendar and ordered to be printed

Mr. BRADEMAS, from the Committee on House Administration, submitted the following

REPORT

together with

SUPPLEMENTAL STATEMENT

[To accompany H. Res. 1505]

The Committee on House Administration, to whom was referred the resolution (H. Res. 1505) having considered the same, report favorably thereon without amendment and recommend that the resolution do pass.

PURPOSE

The purpose of this resolution is to disapprove portions of the regulations submitted by the Administrator of General Services on April 13, 1976 pursuant to Title I of Public Law 93-526 which, in the judgment of the Committee, are not consistent with the basic objectives of the Act, and do not conform to the specific criteria set forth therein.

BACKGROUND

The Presidential Recordings and Materials Preservation Act was signed into law on December 19, 1974. The regulations here involved were submitted by the Administrator of General Services on April 13, 1976.

A brief summary of the major provisions of Title I of the Act can be found in House Report 94-560. A significant provision of the Act required the regulations regarding public access to the materials to give special attention to providing expeditious access to Watergate-related material and are to take into account the following factors:

- (1) The need to provide the public with the full truth, at the earliest reasonable date, of the abuses of governmental power popularly identified under the generic term "Watergate";

(2) The need to make such recordings and materials available for use in judicial proceedings;

(3) The need to prevent general access, except in accordance with appropriate procedures established for use in judicial proceedings; to information relating to the nation's security;

(4) The need to protect every individual's right to a fair and impartial trial;

(5) The need to protect any party's opportunity to assert any legally or constitutionally based right or privilege which would prevent or otherwise limit access to such recordings and materials;

(6) The need to provide public access to those materials which have general historical significance, and which are not likely to be related to the need described in paragraph (1); and

(7) The need to give Richard M. Nixon, or his heirs, for his sole custody and use, tape recordings and other materials which are not likely to be related to the need described in paragraph (1) and are not otherwise of general historical significance.

Section 105(b) of the Act provides that regulations take effect 90 legislative days after submission unless they are disapproved by either House of Congress within that period.

HISTORY OF PROPOSED REGULATIONS

Pursuant to Title I of the Act, the Administrator submitted proposed regulations on March 19, 1975. The Subcommittee on Printing held hearings on the proposed regulations on May 22 and June 3, 1975. On September 10, 1975, the Subcommittee reported House Resolution 710, disapproving the proposed regulations. The full Committee, on September 18, 1975, by a vote of 10 to 5 (one member voting present) ordered the resolution reported to the House. Prior to this action, however, the Senate, on September 11, 1975, adopted Senate Resolution 244, disapproving the proposed regulations.

The Administrator submitted a second set of proposed regulations on October 15, 1975. On January 7, 1976, a three-judge court of the United States District Court for the District of Columbia rendered a decision and opinion in *Nixon v. Administrator of General Services, et al.*, 408 F. Supp. 321, which upheld the constitutionality of the Act. However, on January 21, 1976, the Congress was notified by the GSA Administrator that, at the request of the Justice Department, he was withdrawing the October 15 proposed regulations pending a review of their constitutionality in light of *Nixon v. Administrator of General Services, et al.* The text of the letter received by the Speaker of the House follows:

GENERAL SERVICES ADMINISTRATION,
Washington, D.C., January 21, 1976.

HON. CARL ALBERT,
Speaker of the House of Representatives,
Washington, D.C.

DEAR MR. SPEAKER: On October 15, 1975, my predecessor submitted to the Congress for review proposed regulations implementing Title I of the Presidential Recordings and Materials Preservation Act (Pub. L. 93-526; 88 Stat. 1695). At the time these proposed regulations were submitted to the Congress, the Government was in the midst of defending a judicial challenge to the constitutionality of the Act.

On January 7, 1976, a three-judge panel of the United States District Court for the District of Columbia issued a decision upholding the facial constitutionality of the Act in the case of *Nixon v. Administrator of General Services, et al.*, Civil Action No. 74-1852. Although the court specifically limited its decision to the constitutionality of the Act on its face, Circuit Judge McGowan, speaking for the panel, made frequent references in his opinion to the implementing regulations to be promulgated by the Administrator of General Services. The court noted the crucial role of these regulations in the implementation of the Act and the constitutional scrutiny which they, like the Act, will undoubtedly undergo in the Federal courts.

On January 16, 1976, Assistant Attorney General Rex E. Lee, who is charged with the responsibility of defending the constitutionality of the Act and ultimately the constitutionality of the regulations, wrote me on this subject. He advised that the court's opinion necessitates review of the constitutionality of at least several of the provisions of the proposed regulations submitted to the Congress on October 15, 1975. He further recommended that I should immediately withdraw the regulations submitted to Congress pursuant to the Act pending such a review by GSA, assisted by the Department of Justice. My own counsel's office, which is largely responsible for the regulations as drafted, concurs in the recommendation of the Justice Department. It is my belief that a few weeks of further study may foreclose many months or even years of work in the future. Significantly, in view of court orders which remain outstanding pending an appeal of the district court's decision to the Supreme Court, my withdrawal of the regulations will not delay the ultimate implementation of the Act.

Accordingly, by this letter I am formally withdrawing the proposed regulations submitted to the Congress by the General Services Administration on October 15, 1975. It is my commitment to resubmit them, with or without changes as necessitated by the decision in *Nixon v. Administrator of General Services, et al.*, on or before April 19, 1976.

Sincerely,

JACK ECKERD, *Administrator.*

Despite the claim of the GSA Administrator that he had withdrawn the regulations, the Subcommittee on Printing proceeded on January 22, 1976 to hold hearings on the second set of regulations submitted to Congress on October 15, 1975. A letter dated February 15, 1975, signed by Chairman Ribicoff and Ranking Minority Members Percy of the Senate Government Operations Committee and Chairman Brademas of the Subcommittee on Printing, Committee on House Administration, informed the GSA Administrator that he had no legal authority to withdraw the October 15, 1975 proposed regulations. The text of the letter follows:

U.S. SENATE,
COMMITTEE ON GOVERNMENT OPERATIONS,
Washington D.C., February 5, 1976.

HON. JACK ECKERD,
Administrator, General Services Administration,
Washington, D.C.

DEAR MR. ECKERD: Reference is made to your letters of January 21, 1976, addressed to the President of the Senate and the Speaker of the

House, in which you state that you are "formally withdrawing the proposed regulations submitted to the Congress by the General Services Administration of October 5, 1975."

Section 104 of Public Law 93-52 sets forth detailed procedures relative to the promulgation of public access regulations by the Administrator and the manner in which such regulations are to become effective. Thus, the statute requires submission of proposed regulations by the Administrator to the Congress within 90 days following enactment and provides that they will become effective upon the expiration of 90 legislative days after submission, unless disapproved by a resolution adopted by either House of the Congress during such period. As you know, a three-judge United States District Court has upheld the constitutionality of this Act and its procedures (*Nixon v. Administrator of General Services, et al.*).

An examination of section 104 of the statute makes it clear that the only action authorized, following submission of proposed public access regulations, and during the 90 legislative-day period, is disapproval by either the Senate or the House of Representatives. The statute makes no provision for withdrawal.

We have been advised by the Parliamentarians of both Houses that under our respective rules, no withdrawals of any papers submitted to these bodies may be made without their leave. In addition, the American Law Division of the Congressional Research Service of the Library of Congress concurs in this interpretation.

It might be noted that section 104(a)(1) of the statute specified "the need to provide the public with the full truth, at the earliest date, of the abuses of governmental power popularly identified under the generic term 'Watergate'." Any interpretation permitting withdrawal could have the effect of frustrating this mandate, since GSA could wait 40, 50 or even 89 legislative days and then withdraw, causing the waiting time to begin all over again.

Accordingly, we hereby advise you that we do not recognize as valid your attempted withdrawal of the proposed regulations submitted to the Congress by GSA on October 15, 1975.

We, of course, are willing to consider any refinement you may now wish to suggest to provisions of the proposed regulations. We hope this entire matter can be resolved expeditiously so that these regulations can become effective without further delay.

Sincerely,

ABE RIBICOFF,
Chairman.

CHARLES PERCY,
Ranking Minority Member.

JOHN BRADEMAs,
*Chairman, Subcommittee on Printing,
Committee on House Administration.*

On April 8, 1976, the Senate adopted Senate Resolution 428, disapproving seven of the October 15, 1975, regulations. The seven disapproved regulations involved the definition of private or personal materials, the composition of the Presidential Materials Review Board (which is responsible for the final archival decisions regarding the

disposition of the tapes and other materials); the adequacy of the provisions giving notice to affected individuals prior to the opening of these files to the public; the procedures to be followed by the Administrator in considering petitions to protect certain legal and constitutional rights by limiting access to specified materials; the procedures for allowing reproduction of the Nixon tapes; and two provisions relating to the restriction of the materials which are of a personal nature or which would result in defamation of character.

Since the Senate decided by its action on April 8 that the GSA Administrator had no authority to withdraw regulations, all regulations submitted to Congress on October 15, 1975, which were not specifically disapproved by Senate Resolution 428, became effective, under the terms of Public Law 93-526, upon the expiration of 90 legislative days following October 15, 1975.

COMMITTEE ACTION

Notwithstanding the Senate action on April 8, 1976 disapproving only seven provisions of the October 15, 1975 regulations (S. Res. 428) and ignoring the letter dated February 5, 1975, signed by Senator Ribicoff and Percy and Congressman Brademas, the Administrator of GSA submitted an entire new set of regulations on April 13, 1976.

Since most of these new regulations became effective upon the expiration of 90 legislative days following October 15, 1975, the Chairman of the Subcommittee on Printing, Committee on House Administration, as well as the Chairman and Ranking Minority Member of the Senate Government Operations Committee have determined that only those new regulations submitted by the Administrator on April 13, 1976 covering the seven provisions that were disapproved by Senate Resolution 428 are properly before Congress for review.

Following a complete review of only those new regulations covering the seven previously disapproved sections, the Committee on House Administration has concluded that only the provision dealing with the procedures to be followed by the Administrator in considering petitions to protect certain legal and constitutional rights by limiting access to specified materials is acceptable. House Resolution 1505 has been drafted by the Committee to disapprove those new regulations covering the remaining six provisions that were disapproved by Senate Resolution 428 cited above.

disposition of the tapes and other materials); the manner of the provisions giving notice to affected individuals prior to the opening of these files to the public; the procedure to be followed by the Administrator in considering petitions to protect certain legal and constitutional rights by limiting access to specified materials; the procedure for allowing reproduction of the Nixon tapes; and two provisions relating to the restriction of the materials which are of a personal nature or which would result in detention of criminal cases. Since the Senate decided by its action on April 8 that the (S-2) Administrator had no authority to withdraw regulations all regulations submitted to Congress on October 15, 1975, which were not previously disapproved by Senate Resolution 425, became effective under the terms of Public Law 94-506 upon the expiration of 90 legislative days following October 15, 1975.

LEGISLATIVE ACTION

Notwithstanding the Senate action on April 8, 1976 disapproving only seven provisions of the October 15, 1975 regulations (S-1105, 125) and ignoring the letter dated February 2, 1976, signed by Senator Ribicoff and Percy and Congressmen Bardenheer, the Administrator of GSA submitted an entire new set of regulations on April 15, 1976. Since most of these new regulations became effective upon the expiration of 90 legislative days following October 15, 1975, the Chairman of the subcommittee on Privacy, Committee on House Administration, as well as the Chairman and Ranking Minority Member of the Senate Government Operations Committee have determined that only those new regulations submitted by the Administrator on April 15, 1976 covering the seven provisions that were disapproved by Senate Resolution 425 are properly before Congress for review. Following a complete review of only those new regulations covering the seven previously disapproved sections, the Committee on House Administration has concluded that only the provision dealing with petitions to protect certain legal and constitutional rights by limiting access to specified materials is acceptable. House Resolution 425 has been drafted by the Committee to disapprove those new regulations covering the remaining six provisions that were disapproved by Senate Resolution 425 cited above.

STATEMENT OF REPRESENTATIVE JAMES C. CLEVELAND

I concur in the Report of the Committee recommending the adoption of House Resolution 1505 disapproving six regulations submitted by the Administrator of General Services on April 13, 1976. I particularly support the disapproval of Section 105-63-401. This proposed regulation fails, in my opinion, to provide adequate notification to third parties regarding the opening of file segments of materials which may contain materials that invade personal privacy or libel living persons.

While I agree with the recommendation of the Committee that these regulations be disapproved, a word is in order regarding the Report's reference to the issue of the Administrator's authority to withdraw the October 15, 1976 proposed regulations.

In light of language in the opinion in *Nixon v. Administrator of General Services*, 408 F. Supp. 321 (D. DC 1975) that the October 15, 1975 proposed regulations raised serious constitutional questions, and upon recommendation of the Department of Justice, the Administrator withdrew the proposed regulations on January 21, 1976 prior to the expiration of 90 legislative days or disapproval by either House of Congress.

The Chairman and ranking minority member of the Senate Committee on Government Operations and the Chairman of the Subcommittee on Printing of the Committee on House Administration took issue with the Administrator's authority to withdraw the proposed regulations in a letter dated February 5, 1976. I declined to sign the letter because there had been no formal presentation of the complicated legal and administrative questions involved.

It is unfortunate that the issue of the Administrator's authority to withdraw the October 15 proposed regulations has been raised in this Report. The grounds for disapproval of these proposed regulations are not affected by the unresolved question of the scope of the Administrator's authority to withdraw pending regulations. The question remains, in this instance, an academic one with no need for proponents and opponents of the subject to pursue the issue to final resolution. I do not mean to suggest, however, that the issue is frivolous; it is not, for the matter raises serious questions regarding the relationship between Congress and administrative agencies to which broad powers are delegated. The issue simply need not be pursued with respect to these and future regulations dealing with the Presidential Recordings and Materials Preservation Act because it should have no bearing on the substance of the regulations or their effective date.

JAMES C. CLEVELAND.

STATEMENT OF WITNESSES
CLYDE AND

I cannot find the Report of the Committee recommending the adoption of House Resolution 1503 disapproving six regulations submitted by the Administrator of General Services on April 22, 1976. I cannot find support for the disapproval of Section 103-87-101. This proposed regulation falls in my opinion to provide adequate notice to third parties regarding the opening of the segments of materials which may contain materials that include personal privacy or libel having

While I agree with the recommendation of the Committee that these regulations be disapproved, a word is in order regarding the Report's reference to the issue of the Administrator's authority to withdraw the October 15, 1975 proposed regulations.

In light of language in the opinion in *Nixon v. Administrator of General Services*, 433 U.S. 431 (1977), that the October 15, 1975 proposed regulations raised serious constitutional questions and upon recommendation of the Department of Justice the Administrator withdrew the proposed regulations on January 21, 1976 prior to the expiration of 30 legislative days or disapproval by either House of Congress.

The Chairman and ranking minority member of the Senate Committee on Government Operations and the Chairman of the Subcommittee on Oversight of the Committee on House Administration concur in the Administrator's authority to withdraw the proposed regulations in a letter dated February 1, 1978. I decline to sign the letter because there had been no formal presentation of the constitutional and administrative questions involved.

It is not for me that the issue of the Administrator's authority to withdraw the October 15 proposed regulations has been raised in this Report. The grounds for disapproval of these proposed regulations are not affected by the unresolved question of the scope of the Administrator's authority to withdraw pending regulations. The question remains in the instant case whether one with no need for permanent and opposite of the subject to pursue the same to final resolution. I do not mean to suggest, however, that the issue is frivolous; it is not for the matter raises serious questions regarding the relationship between Congress and administrative agencies to which broad powers are delegated. This issue simply need not be pursued with respect to these and the regulation dealing with the Presidential Executive and National Transportation Act because it should have no bearing on the substance of the regulations or their effective date.

JAMES C. CLARK

APPENDIX IX

[H. Res. 1505, 94th Cong., 2d Sess.]

Resolved, That, pursuant to section 104(b) (1) of the Presidential Recordings and Materials Preservation Act (44 U.S.C. 2107 note), the House of Representatives hereby disapproves section 105-63.104 (b) of title 41 of the Code of Federal Regulations, section 105-63.401 of such title, section 105-63.401-2(g) of such title, section 105-63.402-1(b) of such title, section 105-63.402-2(b) of such title, and section 105-63.404 of such title, as proposed by the Administrator of General Services in a report submitted to the House of Representatives on April 13, 1976.

(9)



Public Law 93-526
93rd Congress, S. 4016
December 19, 1974

An Act

To protect and preserve tape recordings of conversations involving former President Richard M. Nixon and made during his tenure as President, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Presidential Recordings and Materials Preservation Act".

Presidential
Recordings and
Materials Pre-
servation Act.
44 USC 2107
note.

TITLE I—PRESERVATION OF PRESIDENTIAL RECORDINGS AND MATERIALS

DELIVERY AND RETENTION OF CERTAIN PRESIDENTIAL MATERIALS

SEC. 101. (a) Notwithstanding any other law or any agreement or understanding made pursuant to section 2107 of title 44, United States Code, any Federal employee in possession shall deliver, and the Administrator of General Services (hereinafter in this title referred to as the "Administrator") shall receive, obtain, or retain, complete possession and control of all original tape recordings of conversations which were recorded or caused to be recorded by any officer or employee of the Federal Government and which—

44 USC 2107
note.

(1) involve former President Richard M. Nixon or other individuals who, at the time of the conversation, were employed by the Federal Government;

(2) were recorded in the White House or in the office of the President in the Executive Office Buildings located in Washington, District of Columbia; Camp David, Maryland; Key Biscayne, Florida; or San Clemente, California; and

(3) were recorded during the period beginning January 20, 1969, and ending August 9, 1974.

(b) (1) Notwithstanding any other law or any agreement or understanding made pursuant to section 2107 of title 44, United States Code, the Administrator shall receive, retain, or make reasonable efforts to obtain, complete possession and control of all papers, documents, memorandums, transcripts, and other objects and materials which constitute the Presidential historical materials of Richard M. Nixon, covering the period beginning January 20, 1969, and ending August 9, 1974.

(2) For purposes of this subsection, the term "historical materials" has the meaning given it by section 2101 of title 44, United States Code.

"Historical
materials."
88 STAT. 1695.
88 STAT. 1696

AVAILABILITY OF CERTAIN PRESIDENTIAL MATERIALS

SEC. 102. (a) None of the tape recordings or other materials referred to in section 101 shall be destroyed, except as hereafter may be provided by law.

44 USC 2107
note.

(b) Notwithstanding any other provision of this title, any other law, or any agreement or understanding made pursuant to section 2107 of title 44, United States Code, the tape recordings and other materials referred to in section 101 shall, immediately upon the date of enactment of this title, be made available, subject to any rights, defenses, or privileges which the Federal Government or any person may invoke, for use in any judicial proceeding or otherwise subject to court subpoena or other legal process. Any request by the Office of Watergate

Special Prosecution Force, whether by court subpoena or other lawful process, for access to such recordings or materials shall at all times have priority over any other request for such recordings or materials.

(c) Richard M. Nixon, or any person whom he may designate in writing, shall at all times have access to the tape recordings and other materials referred to in section 101 for any purpose which is consistent with the provisions of this title, subsequent and subject to the regulations which the Administrator shall issue pursuant to section 103.

(d) Any agency or department in the executive branch of the Federal Government shall at all times have access to the tape recordings and other materials referred to in section 101 for lawful Government use, subject to the regulations which the Administrator shall issue pursuant to section 103.

REGULATIONS TO PROTECT CERTAIN TAPE RECORDINGS AND OTHER MATERIALS

44 USC 2107
note.

SEC. 103. The Administrator shall issue at the earliest possible date such regulations as may be necessary to assure the protection of the tape recordings and other materials referred to in section 101 from loss or destruction, and to prevent access to such recordings and materials by unauthorized persons. Custody of such recordings and materials shall be maintained in Washington, District of Columbia, or its metropolitan area, except as may otherwise be necessary to carry out the provisions of this title.

REGULATIONS RELATING TO PUBLIC ACCESS

Report to
Congress.
44 USC 2107
note.

SEC. 104. (a) The Administrator shall, within ninety days after the date of enactment of this title, submit to each House of the Congress a report proposing and explaining regulations that would provide public access to the tape recordings and other materials referred to in section 101. Such regulations shall take into account the following factors:

(1) the need to provide the public with the full truth, at the earliest reasonable date, of the abuses of governmental power popularly identified under the generic term "Watergate";

(2) the need to make such recordings and materials available for use in judicial proceedings;

(3) the need to prevent general access, except in accordance with appropriate procedures established for use in judicial proceedings, to information relating to the Nation's security;

(4) the need to protect every individual's right to a fair and impartial trial;

(5) the need to protect any party's opportunity to assert any legally or constitutionally based right or privilege which would prevent or otherwise limit access to such recordings and materials;

(6) the need to provide public access to those materials which have general historical significance, and which are not likely to be related to the need described in paragraph (1); and

(7) the need to give to Richard M. Nixon, or his heirs, for his sole custody and use, tape recordings and other materials which are not likely to be related to the need described in paragraph (1) and are not otherwise of general historical significance.

88 STAT. 1696
88 STAT. 1697

December 19, 1974

- 3 -

Pub. Law 93-526

(b) (1) The regulations proposed by the Administrator in the report required by subsection (a) shall take effect upon the expiration of ninety legislative days after the submission of such report, unless such regulations are disapproved by a resolution adopted by either House of the Congress during such period.

(2) The Administrator may not issue any regulation or make any change in a regulation if such regulation or change is disapproved by either House of the Congress under this subsection.

(3) The provisions of this subsection shall apply to any change in the regulations proposed by the Administrator in the report required by subsection (a). Any proposed change shall take into account the factors described in paragraph (1) through paragraph (7) of subsection (a), and such proposed change shall be submitted by the Administrator in the same manner as the report required by subsection (a).

(4) Paragraph (5) is enacted by the Congress—

(A) as an exercise of the rulemaking power of the Senate and the House of Representatives, respectively, and as such it shall be considered as part of the rules of each House, respectively, and such rules shall supersede other rules only to the extent that they are inconsistent therewith; and

(B) with full recognition of the constitutional right of either House to change such rules (as far as relating to the procedures of that House) at any time, in the same manner, and to the same extent as in the case of any other rule of that House.

(5) (A) Any resolution introduced under paragraph (1) shall be referred to a committee by the Speaker of the House or by the President of the Senate, as the case may be.

(B) If the committee to which any such resolution is referred has not reported any resolution relating to any regulation or change proposed by the Administrator under this section before the expiration of sixty calendar days after the submission of any such proposed regulation or change, it shall then be in order to move to discharge the committee from further consideration of such resolution.

(C) Such motion may be made only by a person favoring the resolution, and such motion shall be privileged. An amendment to such motion is not in order, and it is not in order to move to reconsider the vote by which such motion is agreed to or disagreed to.

(D) If the motion to discharge is agreed to or disagreed to, such motion may not be renewed.

(E) When the committee has reported, or has been discharged from further consideration of, a resolution introduced under paragraph (1), it shall at any time thereafter be in order (even though a previous motion to the same effect has been disagreed to) to move to proceed to the consideration of such resolution. Such motion shall be privileged. An amendment to such motion is not in order, and it is not in order to move to reconsider the vote by which such motion is agreed to or disagreed to.

(6) For purposes of this subsection, the term "legislative days" does not include any calendar day on which both Houses of the Congress are not in session.

(c) The provisions of this title shall not apply, on and after the date upon which regulations proposed by the Administrator take effect under subsection (b), to any tape recordings or other materials given to Richard M. Nixon, or his heirs, pursuant to subsection (a) (7).

"Legislative days."

88 STAT. 1697

88 STAT. 1698

(d) The provisions of this title shall not in any way affect the rights, limitations or exemptions applicable under the Freedom of Information Act, 5 U.S.C. § 552 et seq.

JUDICIAL REVIEW

44 USC 2107
note.

SEC. 105. (a) The United States District Court for the District of Columbia shall have exclusive jurisdiction to hear challenges to the legal or constitutional validity of this title or of any regulation issued under the authority granted by this title, and any action or proceeding involving the question of title, ownership, custody, possession, or control of any tape recording or material referred to in section 101 or involving payment of any just compensation which may be due in connection therewith. Any such challenge shall be treated by the court as a matter requiring immediate consideration and resolution, and such challenge shall have priority on the docket of such court over other cases.

Separability.

(b) If, under the procedures established by subsection (a), a judicial decision is rendered that a particular provision of this title, or a particular regulation issued under the authority granted by this title, is unconstitutional or otherwise invalid, such decision shall not affect in any way the validity or enforcement of any other provision of this title or any regulation issued under the authority granted by this title.

Compensation.

(c) If a final decision of such court holds that any provision of this title has deprived an individual of private property without just compensation, then there shall be paid out of the general fund of the Treasury of the United States such amount or amounts as may be adjudged just by that court.

AUTHORIZATION OF APPROPRIATIONS

SEC. 106. There is authorized to be appropriated such sums as may be necessary to carry out the provisions of this title.

Public Documents Act.

TITLE II—PUBLIC DOCUMENTS COMMISSION

SHORT TITLE

44 USC 3315
note.

SEC. 201. This title may be cited as the "Public Documents Act".

ESTABLISHMENT OF STUDY COMMISSION

SEC. 202. Chapter 33 of title 44, United States Code, is amended by adding at the end thereof the following new sections:

44 USC 3315.

Pott, pp. 1699,
1701.

"§ 3315. Definitions

"For purposes of this section and section 3316 through section 3324 of this title—

"(1) the term 'Federal official' means any individual holding the office of President or Vice President of the United States, or Senator or Representative in, or Delegate or Resident Commissioner to, the Congress of the United States, or any officer of the executive, judicial, or legislative branch of the Federal Government;

88 STAT. 1698
88 STAT. 1699

"(2) the term 'Commission' means the National Study Commission on Records and Documents of Federal Officials; and

December 19, 1974

- 5 -

Pub. Law 93-526

88 STAT. 1699

"(3) the term 'records and documents' shall include handwritten and typewritten documents, motion pictures, television tapes and recordings, magnetic tapes, automated data processing documentation in various forms, and other records that reveal the history of the Nation.

"§ 3316. Establishment of Commission

"There is established a commission to be known as the National Study Commission on Records and Documents of Federal Officials.

44 USC 3316.
National Study
Commission on
Records and
Documents of
Federal Of-
ficials.
44 USC 3317.

"§ 3317. Duties of Commission

"It shall be the duty of the Commission to study problems and questions with respect to the control, disposition, and preservation of records and documents produced by or on behalf of Federal officials, with a view toward the development of appropriate legislative recommendations and other recommendations regarding appropriate rules and procedures with respect to such control, disposition, and preservation. Such study shall include consideration of—

"(1) whether the historical practice regarding the records and documents produced by or on behalf of Presidents of the United States should be rejected or accepted and whether such practice should be made applicable with respect to all Federal officials;

"(2) the relationship of the findings of the Commission to the provisions of chapter 19 of this title, section 2101 through section 2108 of this title, and other Federal laws relating to the control, disposition, and preservation of records and documents of Federal officials;

44 USC 1901.
44 USC 2101,
2108.

"(3) whether the findings of the Commission should affect the control, disposition, and preservation of records and documents of agencies within the Executive Office of the President created for short-term purposes by the President;

"(4) the recordkeeping procedures of the White House Office, with a view toward establishing means to determine which records and documents are produced by or on behalf of the President;

"(5) the nature of rules and procedures which should apply to the control, disposition, and preservation of records and documents produced by Presidential task forces, commissions, and boards;

"(6) criteria which may be used generally in determining the scope of materials which should be considered to be the records and documents of Members of the Congress;

"(7) the privacy interests of individuals whose communications with Federal officials, and with task forces, commissions, and boards, are a part of the records and documents produced by such officials, task forces, commissions, and boards; and

"(8) any other problems, questions, or issues which the Commission considers relevant to carrying out its duties under section 3315 through section 3324 of this title.

"§ 3318. Membership

"(a) (1) The Commission shall be composed of seventeen members as follows:

44 USC 3318.

"(A) one Member of the House of Representatives appointed by the Speaker of the House upon recommendation made by the majority leader of the House;

"(B) one Member of the House of Representatives appointed

by the Speaker of the House upon recommendation made by the minority leader of the House;

"(C) one Member of the Senate appointed by the President pro tempore of the Senate upon recommendation made by the majority leader of the Senate;

"(D) one Member of the Senate appointed by the President pro tempore of the Senate upon recommendation made by the minority leader of the Senate;

"(E) one Justice of the Supreme Court, appointed by the Chief Justice of the United States;

"(F) one person employed by the Executive Office of the President or the White House Office, appointed by the President;

"(G) three appointed by the President, by and with the advice and consent of the Senate, from persons who are not officers or employees of any government and who are specially qualified to serve on the Commission by virtue of their education, training, or experience;

"(H) one representative of the Department of State, appointed by the Secretary of State;

"(I) one representative of the Department of Defense, appointed by the Secretary of Defense;

"(J) one representative of the Department of Justice, appointed by the Attorney General;

"(K) the Administrator of General Services (or his delegate);

"(L) the Librarian of Congress;

"(M) one member of the American Historical Association, appointed by the counsel of such Association;

"(N) one member of the Society of American Archivists, appointed by such Society; and

"(O) one member of the Organization of American Historians, appointed by such Organization.

"(2) No more than two members appointed under paragraph (1) (G) may be of the same political party.

Vacancies.

"(b) A vacancy in the Commission shall be filled in the manner in which the original appointment was made.

"(c) If any member of the Commission who was appointed to the Commission as a Member of the Congress leave such office, or if any member of the Commission who was appointed from persons who are not officers or employees of any government becomes an officer or employee of a government, he may continue as a member of the Commission for no longer than the sixty-day period beginning on the date he leaves such office or becomes such an officer or employee, as the case may be.

"(d) Members shall be appointed for the life of the Commission.

Compensation.

"(e) (1) Members of the Commission shall serve without pay.

"(2) While away from their homes or regular places of business in the performance of services for the Commission, members of the Commission shall be allowed travel expenses in the same manner as persons employed intermittently in the service of the Federal Government are allowed expenses under section 5703 (b) of title 5, United States Code, except that per diem in lieu of subsistence shall be paid only to those members of the Commission who are not full-time officers or employees of the United States or Members of the Congress.

"(f) The Chairman of the Commission shall be designated by the President from among members appointed under subsection (a) (1) (G).

"(g) The Commission shall meet at the call of the Chairman or a majority of its members.

"§ 3319. Director and staff; experts and consultants

44 USC 3319.

"(a) The Commission shall appoint a Director who shall be paid at a rate not to exceed the rate of basic pay in effect for level V of the Executive Schedule (5 U.S.C. 5316).

"(b) The Commission may appoint and fix the pay of such additional personnel as it deems necessary.

"(c) (1) The Commission may procure temporary and intermittent services to the same extent as is authorized by section 3109(b) of title 5, United States Code, but at rates for individuals not to exceed the daily equivalent of the annual rate of basic pay in effect for grade GS-15 of the General Schedule (5 U.S.C. 5332).

"(2) In procuring services under this subsection, the Commission shall seek to obtain the advice and assistance of constitutional scholars and members of the historical, archival, and journalistic professions.

"(d) Upon request of the Commission, the head of any Federal agency is authorized to detail, on a reimbursable basis, any of the personnel of such agency to the Commission to assist it in carrying out its duties under sections 3315 through 3324 of this title.

"§ 3320. Powers of Commission

44 USC 3320.

"(a) The Commission may, for the purpose of carrying out its duties under sections 3315 through 3324 of this title, hold such hearings, sit and act at such times and places, take such testimony, and receive such evidence, as the Commission may deem desirable.

"(b) When so authorized by the Commission, any member or agent of the Commission may take any action which the Commission is authorized to take by this section.

"(c) The Commission may secure directly from any department or agency of the United States information necessary to enable the Commission to carry out its duties under section 3315 through section 3324 of this title. Upon request of the Chairman of the Commission, the head of such department or agency shall furnish such information to the Commission.

"§ 3321. Support services

44 USC 3321.

"(a) The Administrator of General Services shall provide to the Commission on a reimbursable basis such administrative support services and assistance as the Commission may request.

"(b) The Archivist of the United States shall provide to the Commission on a reimbursable basis such technical and expert advice, consultation, and support assistance as the Commission may request.

"§ 3322. Report

44 USC 3322.

"The Commission shall transmit to the President and to each House of the Congress a report not later than March 31, 1976. Such report shall contain a detailed statement of the findings and conclusions of the Commission, together with its recommendations for such legislation, administrative actions, and other actions, as it deems appropriate.

Report to
President and
Congress.

"§ 3323. Termination

44 USC 3323.

"The Commission shall cease to exist sixty days after transmitting its report under section 3322 of this title.

"§ 3324. Authorization of appropriations

44 USC 3324.

"There is authorized to be appropriated such sums as may be necessary to carry out section 3315 through section 3324 of this title."

TECHNICAL AMENDMENT

Sec. 203. The table of sections for chapter 33 of title 44, United States Code, is amended by adding at the end thereof the following new items:

- "3315. Definitions.
- "3316. Establishment of Commission.
- "3317. Duties of Commission.
- "3318. Membership.
- "3319. Director and staff; experts and consultants.
- "3320. Powers of Commission.
- "3321. Support services.
- "3322. Report.
- "3323. Termination.
- "3324. Authorization of appropriations."

Approved December 19, 1974.

LEGISLATIVE HISTORY:

HOUSE REPORT No. 93-1507 (Comm. on House Administration).

SENATE REPORTS: No. 93-1181 (Comm. on Government Operations) and No. 93-1182 accompanying S.J. Res. 240 (Comm. on Government Operations).

CONGRESSIONAL RECORD, Vol. 120 (1974):

Oct. 3, 4, considered and passed Senate.

Dec. 3, considered and passed House, amended.

Dec. 9, Senate concurred in House amendment with amendments; House concurred in Senate amendments.

WEEKLY COMPILATION OF PRESIDENTIAL DOCUMENTS, Vol. 10, No. 51:

Dec. 19, Presidential statement.

The following is the text of the regulations that became effective upon the expiration of 90 legislative days following October 15, 1975. Those provisions which are printed in *italic* are recommended for disapproval by H. Res. 1505. The provision which is underscored is an amended regulation which is not recommended for disapproval.

SUBPART 105-63.1—GENERAL PROVISIONS

- 105-63.104 Definitions.
- 105-63.104(a) Presidential historical materials.
- 105-63.104(b) *Private or personal materials.*
- 105-63.104(c) Abuses of governmental power popularly identified under the generic term Watergate.
- 105-63.104(d) General historical significance.
- 105-63.104(e) Archivist.
- 105-63.104(f) Agency.
- 105-63.104(g) Administrator.
- 105-63.104(h) Initial archival processing.
- 105-63.104(j) Staff.
- 105-63.104(j) National security classified information.

SUBPART 105-63.4—ACCESS BY THE PUBLIC

105-63.400	Scope of subpart.
105-63.401	<i>Processing period.</i>
105-63.401-1	Rights and privileges; right to a fair trial.
105-63.401-2	<i>Segregation and review; Senior Archival Panel; Presidential Materials Review Board.</i>
105-63.401-3	Notice of determinations.
105-63.401-4	Appeals.
105-63.401-5	Transfer of materials.
105-63.402	Restrictions.
105-63.402-1	<i>Materials related to abuses of governmental power.</i>
105-63.402-2	<i>Materials of general historical significance unrelated to abuses of governmental power.</i>
105-63.402-3	Periodic review of restrictions.
105-63.402-4	Appeal of restrictions.
105-63.402-5	Deletion of restricted portions.
105-63.402-6	Requests for declassification.
105-63.403	Reference room locations, hours, and rules.
105-63.404	<i>Reproduction of tape recordings of Presidential conversations.</i>
105-63.405	Reproduction and authentication of other materials.
105-63.406	Amendment of regulations.

§ 105-63.104 *Definitions.*

For the purposes of this Part 105-63, the following terms have the meaning ascribed to them in this § 105-63.104.

(a) *Presidential historical materials.* The term "Presidential historical materials" (also referred to as "historical materials" and "materials") shall mean all papers, correspondence, documents, pamphlets, books, photographs, films, motion pictures, sound and video recordings, machine-readable media, plats, maps, models, pictures, works of art, and other objects or materials made or received by former President Richard M. Nixon or by members of his staff in connection with his constitutional or statutory duties or political activities as President and retained or appropriate for retention as evidence of or information about these duties and activities. Excluded from this definition are documentary materials of any type that are determined to be the official records of an agency of the Government; private or personal materials; stocks of publications, processed documents, and stationery; and extra copies of documents produced only for convenience of reference, when they are clearly so identified.

(b) *Private or personal materials.* The term "private or personal materials" shall mean those papers and other documentary or commemorative materials in any physical form relating solely to a person's family or other nonpublic activities, including private political association, and having no connection with his constitutional or statutory duties or political activities as President or as a member of the President's staff.

(c) *Abuses of governmental power popularly identified under the generic term "Watergate".* The term "abuses of governmental power popularly identified under the generic term 'Watergate'" (also referred to as "abuses of governmental power"), shall mean those

alleged acts, whether or not corroborated by judicial, administrative or legislative proceedings, which allegedly were conducted, directed or approved by Richard M. Nixon, his staff or persons associated with him in his constitutional, statutory or political functions as President, and (1) are or were within the purview of the charters of the Senate Select Committee on Presidential Campaign Activities or the Water-gate Special Prosecution Force; or (2) are circumscribed in the Articles of Impeachment adopted by the House Committee on the Judiciary and reported to the House of Representatives for consideration in House Report No. 93-1305.

(d) *General historical significance.* The term "general historical significance" shall mean having administrative, legal, research or other historical value as evidence of or information about the constitutional or statutory duties or political activities of the President, which an archivist has determined is of a quality sufficient to warrant the retention by the United States of materials so designated.

(e) *Archivist.* The term "archivist" shall mean an employee of the General Services Administration who, by education or experience, is specially trained in archival science.

(f) *Agency.* The term "agency" shall mean an executive department, military department, independent regulatory or nonregulatory agency, Government corporation, Government-controlled corporation, or other establishment in the executive branch of the Government, including the Executive Office of the President. For purposes of § 105-63.302 only, the term "agency" shall also include the White House Office.

(g) *Administrator.* The term "Administrator" shall mean the Administrator of General Services, or his delegate herein or by separate instrument.

(h) *Initial archival processing.* The term "initial archival processing" shall mean the following generic acts performed by archivists with respect to the Presidential historical materials: shelving boxes of documents in chronological, alphabetical, numerical or other sequence; surveying and developing a location register and cross-index of the boxes; arranging materials; reboxing the documents and affixing labels; producing finding aids such as folder title lists, cross-indexes, and subject lists; reproducing and transcribing tape recordings; reviewing the materials to identify items that appear subject to restriction; identifying items in poor physical condition and assuring their preservation; and identifying materials requiring further processing.

(i) *Staff.* The term "staff" shall mean those persons whose salaries were paid fully or partially from appropriations to the White House Office or Domestic Council, or who were detailed on a nonreimbursable basis to the White House Office or Domestic Council from any other Federal activity; or those persons who were otherwise designated as assistants to the President, in connection with their service in that capacity; or any other persons whose files were sent to the White House Central Files Unit or Special Files Unit, for purposes of those files.

(j) *National security classified information.* The term "national security classified information" shall mean any matter which is security classified under existing law, and has been or should be designated as such.

SUBPART 105-63.4—ACCESS BY THE PUBLIC

§ 105-63.400 *Scope of subpart.*

This subpart sets forth policies and procedures concerning public access to the Presidential historical materials of Richard M. Nixon.

§ 105-63.401 *Processing period.*

(a) For 30 calendar days following the effective date of the regulations in this subpart, or the vacation of court orders preventing their implementation, whichever is later (hereinafter, the "effective date"), the Administrator will refrain from archival processing of any of the Presidential historical materials in the Administrator's custody and control to permit any person to take such action as he deems appropriate to protect his legal rights. During this 30-day period, the Administrator will limit activity involving the materials to authorized accesses under Subpart 105-63.3 of this part.

(b) At the end of the 30-day period described in paragraph (a) of this section, the Administrator will commence the initial archival processing of the materials. As soon thereafter as possible, the Administrator will open for public access all of the materials in the Administrator's custody and control which are neither restricted pursuant to § 105-63.402 nor subject to outstanding claims or petitions seeking such restriction. The Administrator will open for public access each integral file segment of the materials upon completion of initial archival processing on that segment. Insofar as practicable, the Administrator will give priority in such initial archival processing to materials relating to abuses of governmental power as defined in § 105-63.104(c).

(c) At least 30 calendar days prior to the opening to public access of any integral file segment of the materials, the Administrator will publish notice in the Federal Register of the proposed opening. Copies of the notice will be mailed directly to Mr. Nixon, or his designated agent or heirs. Whenever a former staff member is reasonably identifiable as the individual responsible for creating or maintaining the file segment proposed to be opened, a copy of the notice will be mailed to the staff member's last known address.

§ 105-63.401-1 *Rights and privileges; right to a fair trial.*

(a) Within 30 days following publication of the notice prescribed in § 105-63.401(c), any person claiming the need to protect an opportunity to assert a legal or constitutional right or privilege which would prevent or limit public access to any of the materials shall notify the Administrator in writing of the claimed right or privilege and the specific materials to which it relates. After consultation with appropriate Federal agencies, the Administrator will notify the claimant by certified mail, return receipt requested, of his decision regarding public access to the pertinent materials. If that decision is adverse to the claimant, the Administrator will refrain from providing public access to the pertinent materials for at least 30 calendar days from receipt by the claimant of such notice.

(b) Within 30 days following publication of the notice prescribed in § 105-63.401(c), officers of any Federal, State, or local court and

other persons who believe that public access to any of the materials may jeopardize an individual's right to a fair and impartial trial should petition the Administrator, setting forth the relevant circumstances that warrant withholding specified materials. After consultation with appropriate Federal agencies, the Administrator will notify the petitioner by certified mail, return receipt requested, of his decision regarding public access to the pertinent materials. If that decision is adverse to the petitioner, the Administrator will refrain from providing public access to the pertinent materials for at least 30 calendar days from receipt by the petitioner of such notice.

§ 105-63.401-2 *Segregation and review; Senior Archival Panel; Presidential Materials Review Board.*

(a) During the processing period described in § 105-63.401(b), the Administrator will assign archivists to segregate private or personal materials, as defined in § 105-63.104(b). The archivists shall have sole responsibility for the initial review and determination of private or personal materials.

(b) During the processing period described in § 105-63.401(b), the Administrator will assign archivists to segregate materials neither relating to abuses of governmental power, as defined in § 105-63.104(c), nor otherwise having general historical significance, as defined in § 105-63.104(d). The archivists shall have sole responsibility for the initial review and determination of those materials which are not related to abuses of governmental power and do not otherwise have general historical significance.

(c) During the processing period described in § 105-63.401(b), the Administrator will assign archivists to segregate materials subject to restriction, as prescribed in § 105-63.402. The archivists shall have sole responsibility for the initial review and determination of materials that should be restricted. The archivists shall insert a notification of withdrawal at the front of the file folder or container affected by the removal of restricted material. The notification shall include a brief description of the restricted material and the basis for the restriction as prescribed in § 105-63.402.

(d) If, during the processing period described in § 105-63.401(b), the archivists should discover materials which reflect an apparent violation of law, the archivists shall bring the material to the attention of the Administrator for referral to the Department of Justice or any other appropriate agency of the United States which has responsibility for investigating a violation of law.

(e) If the archivists are unable to make a determination required in paragraphs (a), (b), or (c) of this subsection, or if the archivists conclude that the required determination raises significant issues involving interpretation of these regulations or will have far-reaching precedential value, the archivists shall submit the pertinent materials, or representative examples of them, to a panel of senior archivists selected by the Archivist of the United States. The Panel shall then have the sole responsibility for the initial determination required in paragraphs (a), (b), or (c) of this subsection.

(f) If the Senior Archival Panel is unable to make a determination required in paragraph (e) of this subsection, or if the panel concludes

that the required determination raises significant issues involving interpretation of these regulations or will have far-reaching precedential value, the Panel shall certify the matter and submit the pertinent materials, or representative examples of them, to the Presidential Materials Review Board.

(g) *The Presidential Materials Review Board ("Board") shall consist of the Administrator of General Services, who shall serve as Chairman, and the following members, who shall be appointed by the Administrator:*

- (1) *The Archivist of the United States;*
- (2) *The Librarian of Congress;*
- (3) *An official of the Department of Justice, nominated by the Attorney General; and*
- (4) *A person, distinguished in archival science, history or political science, who shall not be a Federal employee or official, nominated by the Council of the Society of American Archivists.*

The Board shall meet at the call of the Chairman. Three members of the Board shall constitute a quorum for the conduct of the Board's business, although each member of the Board may participate in all of the Board's decisions. Members of the Board may be represented by their delegates on those occasions when they are unable to attend the meetings of the Board. The Board may consult with officials of interested Federal agencies in formulating its decisions.

(h) When the matter certified to the Board by the Senior Archival Panel involves a determination required in paragraphs (a) or (b) of this subsection, the Administrator will publish notice in the Federal Register of the materials to be considered by the Board. In order to protect the privacy of persons who may have such an interest in the materials, the notice shall consist only of a generic description and listing of the materials to be considered by the Board. Any person may intervene in the Board's consideration by petitioning the Administrator in writing within 30 calendar days of publication of notice, the Board shall prepare a final written decision, together with dissenting and concurring opinions, of the proper categorization and disposition of the pertinent materials. The Board's decision will be the final administrative determination. The Administrator will notify the petitioner by certified mail, return receipt requested, of the final administrative determination within 60 calendar days following receipt of such petition. The Administrator will refrain from transferring any materials in accordance with § 105.63.401-5(a) as a result of the final administrative determination for at least 30 calendar days from the petitioner's receipt of such notice.

(i) When the matter certified to the Board by the Senior Archival Panel involves a determination required in paragraph (c) of this subsection, the Board shall recommend an initial determination to the Senior Archival Panel, which shall retain the sole responsibility for the initial determination.

§ 105-63.401-3 Notice of determinations.

The Administrator will publish in the Federal Register notice of the initial archival determinations described in paragraphs (a) and (b) of § 105-63.401-2 and of the final administrative determinations described in paragraph (h) of § 105-63.401-2 and paragraph (d) of

§ 105-63.401-4. In order to protect the privacy of persons who may have such an interest in the segregated materials, the notice shall consist only of a generic description and listing of the materials that the Administrator proposes to transfer as provided in § 105-63.401-5.

§ 105-63.401-4 Appeals.

(a) Within 30 calendar days of publication of the notice prescribed in § 105-63.401-3, any person may petition the Administrator on the grounds that an initial archival determination described in § 105-63.401-2(a) or (b) is in error.

(b) Richard M. Nixon, or his designated agent or heirs, may petition the Administrator at any time on the grounds that an initial archival determination described in § 105-63.401-2(a) or (b) is in error.

(c) Upon receipt by the Administrator of a petition described in paragraphs (a) or (b) of this subsection, the archivists shall submit the pertinent materials, or representative examples of them, to the Presidential Materials Review Board.

(d) Upon consideration of appeals as described in paragraphs (a) or (b) of this subsection, the Board shall prepare a final written decision together with dissenting and concurring opinions, of the proper categorization and disposition of the pertinent materials. The Board's decision will be the final administrative determination. The Administrator will notify the petitioner by certified mail, return receipt requested, of the final administrative determination within 60 calendar days following receipt of the petition. The Administrator will refrain from transferring any materials in accordance with § 105-63.401-5(a) as a result of the final administrative determination for at least 30 calendar days from the petitioner's receipt of such notice.

§ 105-63.401-5 Transfer of materials.

(a) No sooner than 30 calendar days from the publication of notice prescribed in § 105-63.401-3, or, in the event of a certified determination or an appeal described in § 105-63.401-2(h) or § 105-63.401-4, respectively, no sooner than 30 calendar days from the petitioner's receipt of notice of the final administrative determination, the Administrator will transfer sole custody and use of those materials determined, in whole, to be private or personal, or to be neither related to abuses of governmental power nor otherwise of general historical significance, to former President Nixon or his heirs or, when appropriate and after notifying Mr. Nixon or his designated agent, to the former staff member having primary proprietary or commemorative interest in the materials.

(b) Materials determined to be neither related to abuses of governmental power nor otherwise of general historical significance, and transferred pursuant to paragraph (a) of this subsection, shall upon such transfer no longer be deemed Presidential historical materials as defined in § 105-63.104(a).

(c) When it has been determined that only a segment or portion of a document, recording, or other materials is private or personal, or is neither related to abuses of governmental power nor otherwise of general historical significance, the Administrator will retain custody of the whole recording, document, or other material, but will restrict access to the identified segment or portion. Copies of the pertinent materials will be transferred to former President Nixon or his heirs or,

when appropriate and after notifying Mr. Nixon or his designated agent, to the former staff member having primary proprietary or commemorative interest in the materials.

§ 105-63.402 *Restrictions.*

§ 105-63.402-1 *Materials related to abuses of governmental power.*

(a) The Administrator will restrict access to materials determined during the processing period to relate to abuses of governmental power, as defined in § 105-63.104(c), when:

(1) The Administrator, in accordance with § 105-63.401-1, is in the process of reviewing or has determined the validity of a claim by any person of the need to protect an opportunity to assert a legal or constitutional right or privilege; or

(2) The Administrator, in accordance with § 105-63.401-1, is in the process of reviewing or has determined the validity of a petition by any person of the need to protect an individual's right to a fair and impartial trial; or

(3) The release of the materials would violate a Federal statute; or

(4) The materials are authorized under criteria established by Executive order to be kept secret in the interest of national defense or foreign policy, provided that any question as to whether materials are in fact properly classified or are properly subject to classification shall be resolved in accordance with the applicable Executive order or as otherwise provided by law. However, the Administrator may waive this restriction when:

(i) (A) The requester is engaged in an historical research project; or (B) the requester is a former Federal official who had been appointed by the President to a policymaking position and who seeks access only to those classified materials which he originated, reviewed, signed or received while in public office; and

(ii) The requester has a security clearance equivalent to the highest degree of national security classification that may be applicable to any of the materials to be examined; and

(iii) The Administrator has determined that the heads of agencies having subject matter interest in the material do not object to the granting of access to the materials; and

(iv) The requester has signed a statement, which declares that the requester will not publish, disclose, or otherwise compromise the classified material to be examined and that the requester has been made aware of Federal criminal statutes which prohibit the compromise or disclosure of this information.

(b) *The Administrator will restrict access to any portion of materials determined to relate to abuses of governmental power when the release of those portions would constitute a clearly unwarranted invasion of personal privacy or constitute libel or slander of a living person: Provided, that if material related to an abuse of governmental power refers to, involves or incorporates such personal information, the Administrator will make available such personal information, or portions thereof, if such personal information, or portions*

thereof, is essential to an understanding of the abuses of governmental power.

§ 105-63.402-2 *Materials of general historical significance unrelated to abuses of governmental power*

(a) *The Administrator will restrict access to materials determined during the processing period to be of general historical significance, but not related to abuses of governmental power, under one or more of the circumstances specified in § 105-63.402-1(a).*

(b) *The Administrator will restrict access to materials of general historical significance, but not related to abuses of governmental power, when the release of these materials would:*

(1) *Disclose trade secrets and commercial or financial information obtained from a person and privileged or confidential; or*

(2) *constitute a clearly unwarranted invasion of personal privacy or constitute libel or slander of a living person; or*

(3) *disclose investigatory materials compiled for law enforcement purposes, but only when the disclosure of such records would:*

(a) *Interfere with enforcement proceedings;*

(b) *constitute an unwarranted invasion of personal privacy;*

(c) *disclose the identity of a confidential source, and in the case of a record compiled by a criminal law enforcement authority in the course of a criminal investigation or by an agency conducting a lawful national security intelligence investigation, confidential information furnished only by the confidential source;*

(d) *disclose investigative techniques and procedures, or;*

(e) *endanger the life or physical safety of law enforcement personnel.*

§ 105-63.402-3 *Periodic review of restrictions.*

The Administrator periodically will assign archivists to review materials placed under restriction by § 105-63.402 and to make available for public access those materials which, with the passage of time or other circumstances, no longer require restriction. If the archivists are unable to determine whether certain materials should remain restricted, the archivists shall submit the pertinent materials, or representative examples of them, to the Senior Archival Panel described in § 105-63.401-2(e), which shall then have the responsibility for determining if the materials should remain restricted. The Senior Archival Panel may seek the recommendations of the Presidential Materials Review Board, in the manner prescribed in paragraphs (f) and (i) of § 105-63.401-2, in making its determination.

§ 105-63.402-4 *Appeal of restrictions.*

Upon petition of any researcher who claims in writing to the Administrator that the restriction of specified materials is inappropriate and should be removed, the archivists shall submit the pertinent materials, or representative examples of them, to the Presidential Materials Review Board described in § 105-63.401-2(g). The Board shall review the restricted materials, and consult with interested Federal agencies as necessary. The Board shall prepare a final written decision, includ-

ing dissenting and concurring opinions, as to the continued restriction of all or part of the pertinent materials. The Board's decision shall be the final administrative determination. The Administrator will notify the petitioner of the final administrative determination within 60 calendar days following receipt of such petition.

§ 105-63.402-5 Deletion of restricted portions.

The Administrator will provide a requester any reasonably segregable portions of otherwise restricted materials after the deletion of the portions which are restricted under this § 105-63.402.

§ 105-63.402-6 Requests for declassification.

Challenges to the classification and requests for the declassification of national security classified materials shall be governed by the provisions of § 105-61.104, as that may be amended from time to time.

§ 105-63.403 Reference room locations, hours, and rules.

The Administrator shall, from time to time, separately prescribe the precise location or locations where the materials shall be available for public reference, and the hours of operation and rules governing the conduct of researchers using such facilities. This information may be obtained by writing to: Office of Presidential Libraries (NL), The National Archives, Washington, D.C. 20408.

§ 105-63.404 Reproduction of tape recordings of Presidential conversations.

(a) *To ensure the preservation of original tape recordings of conversations which were recorded or caused to be recorded by an officer or employee of the Federal Government and which:*

(1) *involve former President Richard M. Nixon or other individuals who, at the time of the conversation, were employed by the Federal Government; and*

(2) *were recorded in the White House or in the office of the President in the Executive Office Buildings located in Washington, District of Columbia; Camp David, Maryland; Key Biscayne, Florida; or San Clemente, California; and*

(3) *were recorded during the period beginning January 20, 1969, and ending August 9, 1974,*

the Administrator will produce duplicate copies of such tape recordings in his custody for public and official reference use. The original tape recordings shall not be available for public access.

(b) *Since the original tape recordings may contain information which is subject to restriction in accordance with § 105-63.402, the archivists shall review the tapes and delete restricted portions from copies for public and official reference use.*

(c) *No researcher may reproduce or have reproduced sound recordings of the reference copies of the tape recordings described in paragraph (a) of this section.*

(d) *Within two years of the effective date, the Presidential Materials Review Board shall make a written report which shall evaluate the advisability of continuing the restriction imposed in paragraph (c) above, and will determine whether the restriction prescribed in paragraph (c) shall be retained, revoked or modified to permit controlled reproduction of the reference copies of the tape recordings.*

§ 105-63.405 *Reproduction and authentication of other materials.*

(a) The copying for researchers of materials other than tape recordings described in § 105-63.404 normally will be done by personnel of the General Services Administration using government equipment. With the permission of the Administrator or his designated agent, a researcher may use his own copying equipment. Permission shall be based on the determination that such use will not harm the materials or disrupt reference activities. Equipment shall be used under the supervision of GSA personnel.

(b) The Administrator may authenticate and attest copies of materials when necessary for the purpose of the research.

(c) The fees for reproduction and authentication of materials under this section shall be those prescribed in the schedule set forth in Subpart 105-61.52, or pertinent successor regulation, as that schedule is amended from time to time.

§ 105-63.406 *Amendment of regulations.*

The Administrator may amend the regulations of this Subpart 105-63.4 only after the proposed amendments have been placed before the Congress for 90 legislative days. Proposed amendments shall become effective upon the expiration of this period, unless the proposed amendments are disapproved by a resolution adopted by either House of Congress during such period.



2-105-10. The Administrator may, at his discretion, allow a researcher to use his own research equipment.

(a) The copying for research of materials other than tape recordings described in 2-105-10.4 normally will be done by personnel of the General Services Administration using Government equipment.

(b) The permission of the Administrator or his designated agent, a researcher may use his own copying equipment. A researcher shall be responsible for the determination that such use will not harm the materials or destroy evidence and that equipment shall be used under the supervision of GSA personnel.

(c) The Administrator may authorize the use of other equipment when necessary for the purpose of the research.

(d) The fee for reproduction and duplication of material under this section shall be those prescribed in the schedule of fees in part 105-61.55 of Government acquisition regulation, as that schedule is amended from time to time.

2-105-10.6. The Administrator may amend this regulation.

The Administrator may amend this regulation of this chapter only after the proposed amendments have been placed before the Council for 60 legislative days. Proposed amendments shall become effective upon the expiration of this period, unless the proposed amendments are disapproved by a resolution adopted by either House of Congress during a period.







